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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

ADAM WYNN TINGLEY,

Plaintiff(s),

vs.

DR. R. BRUCE BANNISTER, et al.

Defendant(s).

Case No. 3:14-cv-000358 MMD-VPC

**MOTION TO SUPPLEMENT
OBJECTIONS TO MAGISTRATE
JUDGE'S REPORT AND
RECOMMENDATION**

1. COMES NOW, Plaintiff, ADAM WYNN TINGLEY ("Tingley"), by and through the undersigned counsel, pursuant to Local Rule 7-2(g), and hereby files the following Motion to Supplement Tingley's Objections to Magistrate Judge's Report and Recommendations (Doc. 81) filed in this matter on June 16, 2016 to bring to this Court's attention a recently decided case.

POINTS AND AUTHORITIES

2. On June 6, 2016, two days before the June 8, 2016 Magistrate Judge's Report

1 and Recommendations (“R&R”) (Doc. 80) was issued, and months after the pleadings on
2 the underlying Motion for Summary Judgment (Doc. 66) were filed, the US Supreme Court
3 issued a ruling in *Ross v. Blake*, 2016 U.S. LEXIS 3614 (U.S. June 6, 2016), a copy of the slip
4 opinion for which is attached hereto as Exhibit 1. The *Ross v. Blake* decision made the
5 following rulings on applicability of the exhaustion requirement in the Prison Litigation
6 Reform Act (“PLRA”), which are directly relevant to issues addressed in the pleadings and
7 the R&R:
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9

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- 11 a. An inmate must exhaust available remedies, but need not exhaust
12 unavailable ones. *Id.* at 16-17;
 - 13
14 b. An administrative scheme might be so opaque that it becomes,
15 practically speaking, incapable of use. In this situation, some
16 mechanism exists to provide relief, but no ordinary prisoner can discern
17 or navigate it. When rules are so confusing that no reasonable prisoner
18 can use them, then they’re no longer available. When an administrative
19 process is susceptible of multiple reasonable interpretations, Congress
20 has determined that the inmate should err on the side of exhaustion.
21 But when a remedy is essentially unknowable — so that no ordinary
22 prisoner can make sense of what it demands — then it is also
23 unavailable. *Id.* at 19; and
 - 24
25 c. An administrative remedy is not available when prison administrators
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thwart inmates from taking advantage of a grievance process through
machination, misrepresentation, or intimidation. *Id.* at 21.

3. Applying this decision to Tingley's case, and as described in the underlying
Objections to Magistrate Judge's Report and Recommendations (Doc. 81): (1) Tingley
exhausted the administrative remedies available. He did not file numerous grievances for the
same specific issue of delay and denial of treatment for pterygium because doing so would
have subjected him to discipline under AR 740.02(4) and (5); (2) No ordinary prisoner (or
ordinary person) could make sense of what AR 740.02(2)(B) means when it prohibits
prisoners from filing multiple grievances on the same "specific" issue, as "specific" is not
defined anywhere in NDOC's ARs; and (3) Prisoners in NDOC's custody, including Tingley,
are thwarted by "machination, misrepresentation, or intimidation," i.e. a prisoner is
threatened with punishment in AR 740.02(2)(B) if multiple grievances are filed for the same
specific issue.

4. Given that the *Ross v. Blake* decision was very recently issued in the midst of the
pleading process of the underlying Motion, the Plaintiff requests that the Court find that
good cause exists to grant this Motion.

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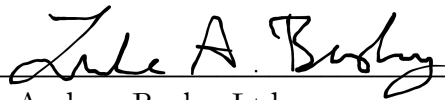
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1 BASED ON THE FOREGOING, the Plaintiff requests that the Court grant this
2
3 Motion and weigh the impact of the *Ross v. Blake* decision in evaluating the R&R.

4 RESPECTFULLY submitted this June 18, 2016.

5
6 By: 
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13 Attorney for the Plaintiff

14 **CERTIFICATE OF SERVICE**

15 I hereby certify that on this June 18, 2016, I electronically transmitted the foregoing
16 pleading to the Clerk's Office using the CM/ECF System for filing and transmittal of a
17 Notice of Electronic Filing to all counsel registered to receive Electronic Filings and/or
18 mailed the foregoing pleading via US Mail postage prepaid to the following persons:

19
20 Benjamin R. Johnson
21 Deputy Attorney General
22 State of Nevada - Office of the Attorney General
23 Public Safety Division - Bureau of Litigation
24 100 N. Carson Street - Carson City, NV 89701-4717
25 E: bjohnson@ag.nv.gov

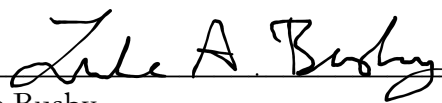
26 By: 
27 Luke Busby
28

Exhibit List

1. Ross v. Blake, 578 U. S. ____ (2016).